

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN B. ROBBINS, JUDGE

DIVISION III

E 06-144

DEPARTMENT OF VETERANS  
AFFAIRS, VA REGIONAL OFFICE  
#350

FEBRUARY 14, 2007

APPELLANT

APPEAL FROM THE BOARD OF  
REVIEW, [NO. 2006-BR-00445]

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES and  
MARTHA E. BRITTON

APPELLEES

AFFIRMED

Appellant Department of Veterans Affairs, VA Regional Office #350, brings this appeal from a decision of the Board of Review finding that appellee Martha E. Britton was discharged from her last work for reasons other than misconduct connected with the work. The appellant argues that the Board's decision is not supported by substantial evidence, and that Mrs. Britton should have been disqualified from receiving unemployment benefits. We affirm.

Arkansas Code Annotated section 11-10-514(a)(1) (Repl. 2002) provides, "If so found by the Arkansas Employment Security Department, an individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection

with the work.” In *Johnson v. Director*, 84 Ark. App. 349, 351-52, 141 S.W.3d 1, 2 (2004), we stated:

“Misconduct,” for purposes of unemployment compensation, involves: (1) disregard of the employer’s interest; (2) violation of the employer’s rules; (3) disregard of the standards of behavior which the employer has a right to expect; and (4) disregard of the employee’s duties and obligations to his employer. *Rossini v. Director*, 81 Ark. App. 286, 101 S.W.3d 266 (2003). To constitute misconduct, however, the definitions require more than mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion. *Id.* Instead, there is an element of intent associated with a determination of misconduct. *Blackford v. Director*, 55 Ark. App. 418, 935 S.W.2d 311 (1996). There must be an intentional and deliberate violation, a willful and wanton disregard, or carelessness or negligence of such a degree or recurrence as to manifest wrongful intent or evil design. *Rossini v. Director, supra*. Misconduct contemplates a willful or wanton disregard of an employer’s interest as is manifested in the deliberate violation or disregard of those standards of behavior which the employer has a right to expect from its employees. *Blackford v. Director, supra*.

The employer has the burden of proving misconduct by a preponderance of the evidence.

*Arkansas Midland R.R. v. Director*, 87 Ark. App. 311, 191 S.W.3d 544 (2004).

In appeals of unemployment compensation cases we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board of Review’s findings. *Snyder v. Director*, 81 Ark. App. 262, 101 S.W.3d 270 (2003). The findings of the Board are conclusive if they are supported by substantial evidence. *Billings v. Director*, 84 Ark. App. 79, 133 S.W.3d 399 (2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Even where there is evidence upon which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could reasonably

reach its decision upon the evidence before it. *Id.* Additionally, the credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board. *Williams v. Director*, 79 Ark. App. 407, 88 S.W.2d 427 (2002).

Mrs. Britton worked for VA Regional Office #350 as an informational technology specialist from 1997 until her discharge on January 15, 2006. The appellant's decision to terminate Mrs. Britton was based on a series of events beginning on April 15, 2005, when Mrs. Britton failed to complete a work assignment and was absent without leave, resulting in a ten-day suspension from work. Mrs. Britton was subsequently reprimanded for disrespect toward her supervisor on July 22, 2005. On July 29, 2005, Mrs. Britton was cited for failure to follow orders and received a five-day suspension. Mrs. Britton received a fifteen-day suspension for failure to complete a work assignment on August 5, 2005. The situation culminated with Mrs. Britton's failure to complete another work assignment on December 16, 2005, resulting in her discharge.

Garry McClellan, Mrs. Britton's second-line supervisor, testified about the events leading up to appellee's termination. He indicated that the April 2005 incident occurred when the office was shorthanded and on April 11 he instructed Mrs. Britton to complete a spreadsheet by 9:00 a.m. on April 14. Instead of complying with that directive, Mrs. Britton responded on the morning of April 13 that she needed to take leave on that day from 12:30 p.m. to 4:00 p.m. Mr. McClellan indicated that the second incident concerned a situation in an open work area where Mrs. Britton was very disrespectful to her immediate supervisor.

Shortly thereafter, there was a problem with the employee e-mail boxes, which Mrs. Britton was told to correct, but at first she took no action and later failed to adequately remedy the problem. Mr. McClellan testified that the August 2005 suspension arose because Mrs. Britton had been given an assignment to set up a particular training program, but failed to take appropriate action to complete the work. Mr. McClellan stated that, after an established pattern of failing to complete her assignments, Mrs. Britton was removed pursuant to an incident on December 16, 2005. Mr. McClellan stated that, on that occasion, a temporary transcriptionist was in the office being paid by the appellant but was unable to perform her work because Mrs. Britton failed to provide the transcriptionist with the proper computer access to complete her duties.

Mr. McClellan acknowledged that during this time frame there was a changing environment at the regional office, and that there had been a reduction in staff, including going from three IT specialists to one. He stated, "Every employee had to do more with less and were expected to pick up more of the load." Mr. McClellan maintained that Mrs. Britton's removal was based on a pattern of continuing behavior where she refused to complete assignments given by her supervisors, and performed assignments in a manner inconsistent with her supervisor's directions.

Mrs. Britton testified on her own behalf, and did not dispute the allegation that she had failed to complete some of her assigned tasks. However, she indicated that such failure was primarily due to unavailability of time or miscommunication, as opposed to willful

misconduct. With regard to the April 2005 incident, Mrs. Britton stated that she advised Mr. McClellan that she did not have time to do things outside of the norm. While she took three hours leave on that occasion without approval, Mrs. Britton stated that she had personal matters to tend to and that she was supposed to be on vacation for the entire previous week but willingly gave that up for the benefit of her employer. Mrs. Britton maintained that her other deficiencies were a result of the reduction in staff, stating:

The only thing that I might add is, you know, they're describing that I have not been...willing to work with the reduction. It's not that I haven't been willing, but when you're trying to focus on IT and you're trying to focus on something that's bigger than one person can handle to begin with, there are certain times you have to say, "I can't deal with this over here because I have to stay focused here in order to accomplish this job correctly." I never refused to work on other things when there was time available.

Mrs. Britton further asserted that there had been communication problems, in particular with her responsibilities regarding the assignment she failed to complete on December 16, 2005. Mrs. Britton testified, "I'm saying there's a problem with communication and that, when I explained to them my side of what's going on, they're trying to twist it into something different." As for the July 22, 2005, incident where she was reported to have been disrespectful to her supervisor, Mrs. Britton stated that she and numerous others who were present saw nothing inappropriate about the conversation.

For reversal of the Board's decision, the appellant argues that the only reasonable conclusion was that Mrs. Britton was guilty of willful misconduct and not just poor job performance. Appellant notes that Mrs. Britton had received positive reviews in the past,

and asserts that when she did perform her assignments the work was at or above expectations. Appellant contends, however, that on multiple occasions Mrs. Britton simply refused to carry out her assignments, and established a pattern of resisting anything assigned to her. Appellant further submits that Mrs. Britton's decision to leave work without prior approval, and her insubordination to her supervisor, constituted instances of intentional disregard for her employer's interests. Under these circumstances, appellant argues that there is no substantial evidence to support the Commission's finding that Mrs. Britton was discharged for reasons other than misconduct in connection with the work.

Deferring to the Board's duty to determine the credibility of witnesses, as we must, we hold that substantial evidence supports the Board's finding that appellant failed to meet its burden of proving that Mrs. Britton's termination was for misconduct connected with her work. It is evident that the Board credited Mrs. Britton's testimony, and she explained that her repeated deficiencies in timely completing certain work assignments was not due to intentional insubordination, but rather to a reduction in work staff causing unworkable time constraints, as well as communication problems regarding what was expected from her. While it is true that on the initial episode in April 2005 Mrs. Britton did take three hours of unauthorized leave rather than working on an assigned task, this resulted not in her termination but rather a ten-day suspension. The Board specifically found, "The claimant rebutted the allegations with reasonable explanations concerning all the allegations, except for the first event in April 2005 when she declined to complete an assigned report." The

Board found that the reason for termination was a subsequent series of events that reflected an unsuccessful attempt by Mrs. Britton to perform her job to the best of her abilities, as opposed to willful disregard for the directions of her supervisor. Because the Board could reasonably reach this conclusion on the evidence presented, we affirm its decision that Mrs. Britton is not disqualified from benefits under Ark. Code Ann. § 11-10-514(a)(1) (Repl. 2002).

Affirmed.

GLOVER and MILLER, JJ., agree.